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[\*Ledford v. Baltimore Gas & Elec. Co.\*](#), 83-ERA-9 (ALJ Nov. 29, 1983)

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**U.S. Department of Labor**  
Office of Administrative Law Judges  
1111 20th Street, N.W.  
Washington, D.C. 20036

Case No. 83-ERA-9

In the Matter of

JOHN M. LEDFORD

v.

BALTIMORE GAS AND ELECTRIC COMPANY

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10 Light Street  
Baltimore, MD 21202  
For the Complainant

Michael D. Rind, Esquire  
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Baltimore, Md 21203  
For the Respondent/Employer

BEFORE: E. EARL THOMAS  
Deputy Chief Judge

RECOMMENDED DECISION AND ORDER

This proceeding arises under the Energy Reorganization Act of 1974, as amended, (hereafter referred to as the Act), 42 U.S.C.

5851, and its implementing regulations, 29 C.F.R. Part 24. On January 17, 1983, the complainant, John M. Ledford, filed a complaint with the United States Department of Labor under 29 C.F.R. 24.3. The complaint alleged that his discharge from the respondent/employer, Baltimore Electric and Gas Company was discrimination under the Act. On March 8, 1983, following an investigation, the Area Director for the Employment Standards Administration, United States Department of Labor, concluded that Ledford's discharge was not related to activities protected under the Act and that discrimination under the Act was not a factor in his discharge. Ledford appealed the decision of the Area Director to the Office of Administrative Law Judges.

At a formal hearing held in Washington, D.C., the parties were afforded the opportunity to present evidence and argument.<sup>1</sup> The following findings and conclusions are based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing, and upon an analysis of the entire record, arguments of the parties, applicable regulations, statutes, and case law precedent.<sup>2</sup> The record was kept open for twenty days after receipt of the transcripts to give the parties an opportunity to file post-hearing briefs. Both parties filed post-hearing briefs that have been considered.

#### Statement of Facts

John M. Ledford was hired by the Baltimore Gas and Electric Company on May 13, 1981, to be a quality control inspector at the latter's Calvert Cliffs Nuclear Power Plant (Calvert Cliffs). Robert M. Douglass, who testified at the hearing, has been the manager of Calvert Cliffs's Quality Assurance Department since November, 1978. Douglass testified that the Quality Assurance Department is responsible for developing and implementing a management control system that insures that the nuclear plant is operated and maintained in accordance with company and regulatory requirements. (Tr. 321). As a quality control inspector, Ledford's job was to inspect work activities to insure conformance to quality standards. (Tr. 322).

Under Baltimore Gas and Electric Company's employment policy, quality control inspectors are first appraised three to six months after being hired and then appraised annually. A printed employee

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performance appraisal form is used. The appraisal form has fourteen sections judging performance as to job knowledge, volume of work, quality of work, dependability, job behavior, work relations, among other factors. Each section allows the appraiser to check a box indicating generally whether the employee's work is what is expected more than expected, or less than expected. Section 8 of the appraisal asks the appraiser to give the employee an overall rating of A, B, C, or unsatisfactory. Ledford was first appraised in November, 1981. He was given a "B" rating for overall performance, meaning that his performance was considered what was normally expected (CX 18). In each of the fourteen sections, Ledford was given an average rating.

In November, 1982, a second employee performance appraisal on Ledford was filled out by his supervisor, Ken Strupp. (EX 10). Strupp gave Ledford an overall "C" rating, indicating his performance was less than what was normally expected. Under section 2, Strupp comments that Ledford "[d]oes as little as possible. Expends more energy trying to get out of work than he does doing the work". Section 3 concerns quality of work and Strupp writes that Ledford "[s]pends little time on the job. Appears to want to find any reason to stop work. Catches field problems too late; if they were caught earlier work stoppage would be reduced." Under section 4 dealing with dependability, Strupp writes that Ledford was a "[h]abitual 'bell-ringer' usually arriving 1-2 minutes late." Under section 5, job behavior, Strupp comments that Ledford "[n]eeds constant supervision. Accepts special assignment as a method of getting out of regular work. Does not ask for work when he has free time (some improvement has been noted in the last month)...." Under section 6, work relations, Strupp comments that Ledford "[t]reats the contractors with contempt."

The performance appraisal was shown to Ledford for his signature. Upset at the rating, Ledford contacted Harry Tyson Murphy, Jr. Murphy works for Baltimore Gas and Electric Company as an employee case analyst, assisting the Grievance Coordination Unit. Murphy testified at the hearing that towards the end of November, 1982, he received an anonymous call from someone saying he did not agree with his appraisal and asking what he could do. (TR. 293-296). Murphy testified that several days later he received a telephone call from Ledford who identified himself as the one who called earlier.<sup>3</sup> Ledford stated that he was particularly concerned about two comments appearing on his performance appraisal. He denied that he was a habitual bell ringer and that he took regular work time to

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finish special assignments. Ledford told Murphy that he had not been counseled about these problems and indicated that he wanted an investigation made. (Tr. 296-298).

Murphy began his investigation by talking to Ledford's immediate supervisor and appraiser, Ken Strupp. Murphy then told Ledford that he should talk things over with Strupp, that the latter was willing to change some of language on the appraisal but would not alter the "C" rating. Murphy told a still unhappy Ledford that his next appeal was to the general supervisor, Steve Davis. (Tr. 299-304). Ledford later asked Murphy for the level of appeal after Davis and was told that the next level was to the manager, Robert M. Douglass. Murphy has no more direct dealings with Ledford. (Tr. 305).

Robert M. Douglass, manager of Calver Cliff's Quality Assurance Department, testified that he first became aware of Ledford's "C" rating on November 30, 1982, when Davis mentioned that he was meeting Ledford. Douglass heard nothing more until December 9, 1982, when he had a discussion about the Ledford situation with Murphy. (Tr. 325). Murphy told Douglass about his call from Ledford, his talk with Strupp, and his recommendation to Strupp that some phrases on the appraisal be changed. Murphy

also told Douglass that Ledford wanted to meet with him and Douglass asked Murphy to set up a meeting. (Tr. 326).

On December 14, 1982, Ledford met with Douglass and Davis in the latter's office. Just prior to the meeting, Davis gave Douglass a copy of Ledford's appraisal along with Ledford's hand-written rebuttal. (EX 3). Douglass called Strupp to review his comments. Douglass testified that at the meeting, Ledford denied much of what Strupp had told him and therefore, Douglass suggested that another meeting be held with Strupp present. (Tr. 327).

On December 20, 1982, a meeting was held with Ledford, Davis, Strupp, and three senior quality control inspectors. Strupp offered a two-page document (EX 5) he had prepared on his problems with Ledford and according to Douglass, Ledford essentially agreed that each item was true. (Tr. 327-328). Following the December 20 meeting, Douglass contacted Anton Stanley Endler, the manager of the Employee Services Department. (Tr. 331).

Endler testified at the hearing that he first became aware of Ledford when he was told about the "C" appraisal by one of his employees, Murphy. Endler suggested that Murphy contact Douglass.

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Endler testified that next he and Douglass discussed the case at length over the telephone. (Tr. 205-209).

Douglass testified that he felt Ledford should be discharged. Endler recommended that he be suspended while they further investigated and reviewed the case with management. (Tr. 332). On December 21, 1982, Douglass, Endler, Strupp, and Davis met to present a disciplinary action report (EX. 6) to Ledford<sup>4</sup> and to tell him that he was being suspended. (Tr. 332-333). After the suspension, Douglas again contacted Endler and set up a meeting with Arthur Lundvall, Douglass's vice-president. Douglass and Endler recommended to Lundvall that Ledford be discharged and Lundvall agreed with their recommendation. (Tr. 334). On December 27, 1982, Douglass telephoned Ledford to tell him that he was being discharged. (Tr. 335).

Ledford testified on direct and on cross-examination about several incidents that occurred while working for Calvert Cliffs. On the day after Thanksgiving in 1981, Ledford along with a team of quality control inspectors was sent by his employer to the Timet plant in Steubenville, Ohio. Ledford had a shift at one o'clock in the morning. On cross-examination Ledford testified that he reported to work after having had one glass of wine. (Tr. 131-132). The guard and foreman on duty at that time reported him for drinking. A member of the quality control team also in Ohio during November, 1981, testified that on two occasions Ledford came to relieve him from his shift after he had

been drinking. (Tr. 412). Wayne Wolfslager further testified that on both occasions he felt that Ledford was able to his job. (Tr. 412).

Ledford testified about another incident that occurred during his first trip to the Timet plant in Ohio. He rejected a large number of titanium tubes because of excessive scratches. Ledford's inspection report provided that no excessive scratches on titanium tubes shall be accepted. Ledford pointed out the problem to his supervisor, Jess Pence. Pence told Ledford that the tubes were good and that he had disrupted the plant. (Tr. 67-69).

On the same trip, Pence found Ledford reading a *Reader's Digest*. Ledford testified that reading helped keep him awake during the night shift and that he had nothing else to do. (Tr. 133). On another occasion, Pence admonished Ledford for not wearing a hard hat. Ledford testified that he was in a break area and that the company rules designate

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certain break areas where wearing hard hats are not necessary. (Tr. 134).

Ledford was called back to Maryland in December, 1981, because of these incidents. He asked to be allowed to return to Ohio to clear his name. (Tr. 135). Ledford made two more trips to Ohio.

During his trip to Ohio in January, 1982, Ledford was asked by another quality control inspector, James Shucker, to switch shifts. (Tr. 129). Ledford had a shift that began on January 12 and ended on January 13. To accommodate Shucker, Ledford worked one of the former's earlier shifts, returned to Maryland on January 12 and reported to work on January 14. (Tr. 146). When Ledford and Shucker submitted their time sheets for the January trip, neither reported that they changed shifts. (Tr. 130). (EX 1).

Ledford's immediate supervisor Strupp became aware of the switched shift when Ledford returned to work at Calvert Cliffs. (Tr. 147, 169- 170). Ledford testified that he was unaware switching shifts was a violation of company policy until told on his return. He told Strupp he would never do it again. (Tr. 131). Shucker testified that he never told anyone about the switched shifts. He stated that sometime in October, 1982, he was given a written warning about the January switching. (Tr. 454).

Ledford testified about other incidents that occurred while he was employed at Calvert Cliffs. During his tenure at the plant he found over twelve different construction packages that were out- of-date. (Tr. 47-49). He pointed out the condition to his employers many times. Sometimes his supervisors or senior quality control inspectors would tell him that he was nitpicking, sometimes they would tell him that he was right. (Tr. 50-52). Ledford testified about an incident that occurred in September, 1982. He found a control cable violating procedures because it was running with power cables. Thinking this created a hazardous condition, Ledford brought the problem to the attention of a senior electrical

quality control inspector, Ken Pickering. Ledford states that Pickering threw a pencil, got enraged, and told him that he was wrong. Ledford states that he was taken off the job. (Tr. 53-55).

Another incident occurred during an outage at the plant. Ledford testified that a foreman was doing a welding job for which he was not qualified. Ledford informed his senior quality control inspectors who stopped the job after the welding had been completed. A doctor

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of metallurgy, Dr. Pond, was brought in to examine the welding job. He found it to be acceptable. (Tr. 56-57, 104-105).

Ledford testified that in April, 1982, he was handed a field change request about installing lead shielding in a reactor. (Tr. 58). Ledford pointed out a problem he discovered concerning the use of too many bags causing overweight. He was praised by his supervisors who asked him to write a nonconformance report. (Tr. 59). Nonconformance reports once submitted are audited by the Nuclear Regulatory Commission. Ken Strupp later told Ledford not to submit the report because it would cause too many complications. Ledford stuck the report in his desk. (Tr. 60).

Ledford testified that he complained about the frequent change of quality control inspectors on the job. Each day the company would change inspectors and Ledford felt this practice was unsafe. (Tr. 70). He was told that the assignment of inspectors was none of his business. (Tr. 71). Ledford further testified that he frequently caused change notices to be written which resulted in work stoppages. (Tr. 72).

In explaining the comment on his appraisal that he had contempt for contractors, Ledford stated that one of the contractors was wearing tennis shoes on the job although the company's safety rules required that hard toe shoes be worn. Ledford went to a supervisor, Ken Pickering, saying that it was about time the contractor was told that he was violating safety procedures. Pickering told Ledford that it was none of his business. (Tr. 115).

Ledford admitted on cross-examination that on August 29, 1982, at 11:00 a.m., he was caught having breakfast at a restaurant off the Calvert Cliffs property. (Tr. 138). After he was caught, Ledford asked his manager whether he should dock himself for the time but his manager told him not to and signed Ledford's time sheet. (Tr. 139).

On cross-examination, Ledford stated that he had contacted the Nuclear Regulatory Commission (NRC) two weeks before he was suspended by Calvert Cliffs. (Tr 151). David Trimble, a resident inspector for NRC at Calvert Cliffs since January, 1982, testified at the hearing. Trimble testified that on December 16, 1982, he was approached by Ledford who said that he was having trouble with the supervisor and that he wanted to

talk. Being busy at the time, Trimble suggested that Ledford either talk to another NRC employee

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or wait until he was free later in the afternoon. (Tr. 478). Trimble's next contact with Ledford occurred on December 21, 1982. Trimble called Ledford and set up a meeting for December 22, 1982. (Tr. 479). Ledford requested anonymity at the meeting and Trimble testified that he honored the request. (Tr. 480). Trimble testified further that he had not informed any representative of Calvert Cliffs about Ledford's contact prior to the date of Ledford's discharge. (Tr. 481).

Ralph Architzel, the senior resident inspector for NRC at Calvert Cliffs since January, 1980, testified that on December 21, 1982, Ledford approached him in the turbine hall at the plant. (Tr. 489). Architzel testified that he did not inform anyone at Calvert Cliffs about being approached by Ledford. (Tr. 489). On cross-examination, Trimble and Architzel admitted that Ledford first approached them in an area where both the employees and management of Calvert Cliffs could have seen them talking together. (Tr. 482, 491-492). Upon further questioning by Baltimore Gas and Electric Company, they stated that it was not unusual for employees to be seen talking with them in the turbine hall. (Tr. 486, 494).

Both Trimble and Architzel testified that they were aware Ledford had asked to see them on December 21, 1982, and that someone from Calvert Cliffs had denied Ledford access to them. (Tr. 483, 492). Architzel testified that he was unaware of other instances in which Calvert Cliffs had denied an employee access to an NRC resident inspector. (Tr. 494).

### Issues

The issues are (1) whether Ledford engaged in activities protected by the Act and regulations and (2) whether the adverse actions taken against Ledford by Baltimore Gas and Electric Company were discriminatory within the meaning of the Act and regulations.

### Discussion

#### I

The employee protection provision of the Energy Reorganization Act, 42 U.S.C. 5851, provides in part, that

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(a) No employer ... may discharge any employee or otherwise discriminate against any employee ... because the employee ... (3) assisted or participated or is about to assist or participate in a proceeding [under this Act] or in any other action to carry out the purposes of this Act ....

Baltimore Gas and Electric Company is an employer subject to Section 5851.

Ledford contends that he was discharged for bringing too many safety problems to the attention of his supervisors and for raising questions about the safety of certain operating procedures. Baltimore Gas and Electric Company alleges that the discharge was based upon Ledford's demonstrated lack of judgment and integrity. A "dual motive" case thus arises. A dual motive case exists when an employer may have had valid and invalid reasons for taking adverse action against an employee. The United States Supreme Court has held that in dual motive discharge cases arising under Section 8(a)(3) of the National Labor Relations Act, 29 U.S.C. 158 (a)(3), the "but for" test is appropriate. *See Mt. Healthy City School District Board of Education v. Doyle*, 429 U.S. 274 (1977). In *Mt. Healthy* an employee alleged that the Board of Education had improperly failed to rehire him because he had engaged in constitutionally protected conduct. The Supreme Court held that the burden was on the employee to show that his conduct was protected and that the protected conduct was a motivating factor in the decision of the Board of Education not to rehire him. Once this was established, the burden shifted to the Board to show by a preponderance of the evidence that it would have made the same decision not to rehire the employee, even in the absence of the protected conduct.

In *Consolidated Edison Co. of New York, Inc. v. Donovan*, 673 F.2d 61, 62 ( 2d Cir. 1982), the United States Court of Appeals for the Second Circuit held that the "but for" test adopted from *Mt. Healthy* should be applied in Section 5851 proceedings. The test as been adopted by administrative law judges in *Liverett v. Tennessee Valley Authority*, 82-ERA-1 (1982) and *Drew v. Jersey Central Power & Light Co.*, 81-ERA-3(1982). I conclude that the "but for" test is appropriate here.

As I have adopted the "but for" test for use in dual motive cases arising under the employee protection provision, Section 5851 of the Act, Ledford must establish (1) that he engaged in protected activity at Calvert Cliffs, and (2) that the protected activity was

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a motivating factor in the decision to discipline Ledford. if Ledford can establish that, the burden shifts to Baltimore Gas and Electric Company to prove by a preponderance of the evidence that it would have taken the same actions even had Ledford not engaged in protected activity.

It should be noted at this juncture that the actions taken against Ledford occurred in three stages. First, he was given a "C" rating by his appraiser Ken Strupp in November, 1982. Second, he was suspended on December 21 by Robert M. Douglass. Third, Ledford was discharged by Douglass on December 27. Each of these three actions must be



examined in determining whether Ledford was discriminated against by Baltimore Gas and Electric Company.

## II

In determining whether Ledford was discriminated against, I will first examine the contacts he made with NRC personnel. Contact with NRC concerning safety violations is activity the Act is designed to protect. For Ledford to establish a *prima facie* case, he must show that his employer was aware of his whistleblowing contacts with NRC. See *Crider v. Pullman Power Products Corp.*, 82-ERA-7 (1982). Without prior knowledge, the employer's decision to discipline Ledford could not have been motivated by his protected activity.

Ledford first contacted David Trimble on December 16, 1982, after he received his "C" rating. Nothing was discussed during their brief meeting in the turbine hall of Calvert Cliffs. Both Trimble and his fellow NRC resident inspector were contacted by Ledford on December 21, 1982, the day Ledford was suspended. On December 22, 1982, Trimble met with Ledford off the property of Calvert Cliffs. Both Trimble and Architzel testified credibly that they did not inform anyone from Calvert Cliffs that Ledford was talking with them. Ledford admitted that he asked Trimble for anonymity. Based upon these facts, I find that Baltimore Gas and Electric Company did not suspend Ledford on December 21, 1982, because of his contacts with NRC resident inspectors because no one was aware that Ledford had contacted them. Ledford tried to establish that when he first approached Trimble and Architzel, it was in an area of the plant where he was in full view of other employees and management. However, both Trimble and Architzel testified that it was not unusual for employees to stop and talk with them on a daily basis in the turbine hall area. Finding their testimony credible, Ledford's initial contacts with Trimble and Architzel would not have appeared unusual and thus the contacts were not the reason Ledford was given a "C" rating and later suspended.

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The testimony reveals that when Ledford met with Douglass and Davis on December 21, 1982, and was told of his suspension, he asked to meet with an NRC resident inspector but was denied access. I believe the testimony of Douglass and Endler that Douglass recommended discharging Ledford even before he was suspended but delayed acting to allow further investigation and to discuss the situation with other management officials. No testimony was elicited and no evidence suggests that Ledford's subsequent discharge was based upon his request to see an NRC inspector after he was suspended on December 21, 1982. The discharge was based on events occurring before Ledford's suspension and before Douglass's awareness that Ledford was attempting to contact the NRC. According, I conclude that Ledford was not discriminated against because of his contacts with NRC resident inspectors.

## III

The next issue to determine is whether Ledford was discriminated against for raising questions about the safety of the Baltimore Gas and Electric Company's procedures and activities. In *Cotter v. Consolidated Edison Co. of New York*, 81-ERA-6 (1981), the administrative law judge held that the Act's employee protection provision covers situations where an employee complains about safety violations within the employer's organization. By affirming the administrative law judge in *Consolidated Edison Co. of New York, Inc. v. Donovan*, 673 F.2d 61 (2d Cir. 1982), the United States Court of appeals for the Second Circuit has agreed that the Act protects employees who "blow the whistle" within their organization as well as those who instigate NRC investigations.

The Baltimore Gas and Electric Company argues in its post-hearing brief that those responsible for disciplining Ledford did not have knowledge of his whistleblowing activities and therefore any adverse action taken could not have been a result of the protected activity. Earlier I found that no one at Calvert Cliffs was aware of Ledford's contacts with NRC. However, due to the nature of his job as a quality control inspector, Ledford was bringing safety violations to light at Calvert Cliffs. Theoretically, the more vigorously a quality control inspector pursues his job ferretting out potential safety hazards and bringing them to his employer's attention, the more pleased his employer will be. In effect, Robert M. Douglass acknowledged this during his testimony when the following exchange took place:

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Mr. Blum: It's true, is it not, that the company's procedures reflect the NRC regulations?

Mr. Douglass: Absolutely.

Mr. Blum: And the company tries to comply with NRC regulations?

Mr. Douglass: We do comply.

Mr. Blum: Do comply. And part of that responsibility falls on the quality control inspector; is that true?

(Tr. 392-393). Thus, an employer hires a quality control inspector to bring safety violations to light. Consequently, by doing his or her job, a quality control inspector is almost always engaging in protected activity.

As counsel for Ledford has ably shown, the irony is clear. An employer pays the quality control inspector to find possible safety hazards; however, an inspector who is too effective will raise the employer's immediate costs substantially. It may behoove the employer to keep its inspectors submissive and docile. Ledford tries to establish that this ironic situation was present here and that he was penalized for zealously performing his duties.

Ledford testified about several incidents where he either caused work stoppages or complained about safety problems resulting in his supervisor's displeasure. For example, Ledford claimed that Strupp's comment about his contempt for contractors referred to the time he saw a contractor wearing tennis shoes on the job. According to Calvert Cliffs safety rules, employees were required to wear hard toe shoes. After seeing this contractor

wearing tennis shoes several times, Ledford told a senior quality control inspector that he thought the matter should be brought to the contractor's attention. The senior inspector told Ledford that it was none of his business. Ledford argues that he was doing his job by ensuring company rules were being followed. Baltimore Gas and Electric Company maintains that Ledford's job did not include policing other employees about tennis shoes. Although I can see how as a quality control inspector, Ledford might feel that he was responsible for policing all aspects of safety, I am inclined to agree with the Calvert Cliffs supervisors that this was none of Ledford's business. Ledford was primarily responsible for assuring that the nuclear plant was safe, that no

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disastrous accidents occurred because NRC regulations were not followed or because of improper building, maintenance, or functioning. He was not responsible for ensuring that every company rule, even those pertaining to its employees's own safety, be followed by his colleagues.

Another incident arose when Ledford questioned the Quality Assurance Department policy of alternating on each day the quality control inspectors working on a particular job. Ledford maintained that the same inspector should be left on the job. Apparently, Ledford informed his supervisors about his concern several times and was told that it was none of his business. I agree with Baltimore Gas and Electric Company that Ledford's disagreement with the manner in which his supervisors in the Quality Assurance Department made work assignments was not his concern. Without some proof that an employer is actually trying to cover up safety violations, complaints about job assignments from an entry level quality control inspector are not activities the Act was designed to protect.

Other examples Ledford proffers to show that he was disciplined for protected activity concern his rejection of titanium tubes due to excessive scratches, his objection to a welding job being performed by an unqualified foreman, and his objection to the decision not to file a nonconformance report with the NRC. Speaking out about these problems was part of Ledford's job as a quality control inspector and thus, as indicated above, by its very nature was activity the Act is designed to protect. If Ledford can show that his "C" rating, his suspension, or his discharge were motivated by his activity of objecting to the scratched tubes, unqualified welder, or the unfiled report, he has established a *prima facie* case of entitlement.

A determination of whether Calvert Cliffs was motivated by Ledford's protected activities rests largely upon the credibility of the witnesses. Unfortunately, Strupp did not testify. Comments on the appraisal indicate that Strupp's concern was not that Ledford found safety problems but that he discovered them too late. Had the problems been caught earlier, fewer work stoppages would have been necessary. (EX 10, CX 19). Indeed, Ledford was praised for finding the problem that led to the nonconformance report. (Tr. 59). No evidence indicates that he complained when his supervisor told him

not to file the report he had written. Ledford raised the issue about the decision of Calvert Cliffs not to file the report after he received his "C" appraisal, or months after the incident occurred. The following exchange took place at the hearing between Ledford and

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counsel for Baltimore Gas and Electric Company when the former indicated that he had approached the NRC after having received his appraisal:

Mr. Rosasco: In other words, two days after you got suspended then you went to the NRC?

Mr. Ledford: I went to the NRC first. I didn't realize I was going to be suspended so fast.

Mr. Rosasco: You were suspended on the 21st, and two days later you went to NRC. So you were already suspended when you went there. In fact, that is why you went there isn't it?

Mr. Ledford: At that time, I went there to inform them of the neglect of the lead shielding [documented in the unfiled nonconformance report].

Mr. Rosasco: You knew about it since April or May, and you never did anything for all those months from April or May to December. Is it just a coincidence that two days after you were suspended, you decide to go down and tell the NRC something that you think is wrong?

Mr. Ledford: Well, I had a family to protect, and people take offenses when someone speaks out sometimes.

(Tr. 170-171). This exchange is indicative of two things. First, it illustrates that rather than complain within the organization about the decision not to file his nonconformance report, Ledford kept quiet because he did not want to suffer the consequences of speaking out. Thus, by his own admission, his supervisors were not aware that Ledford was unhappy with the decision not to file his report about the lead shielding problem and consequently his unexpressed unhappiness could not have motivated his "C" appraisal. Again by his own admission, the last word on the subject by his supervisors was praise for a job well-done.

The above exchange also calls into question Ledford's credibility. His statement that he went to the NRC after having been

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suspended because he did not realize he was going to be suspended so fast indicates that his reason for going to the NRC lay with his displeasure at receiving a "C" rating and his displeasure at the consequences of his attempts to have the rating changed. He does not seem to have been motivated by a concern about the lead shielding safety problem as he professes. Ledford testified he did not mention the lead shielding problem to the NRC

representatives until December 23 or 24 even though he had contacted them earlier. (Tr. 155, 158).

Ledford's credibility was repeatedly called into question at the hearing. For example, when testifying about his first trip to Ohio, Ledford denies or skirts the issue about having had problems, having been called back to Maryland, and having asked to return to Ohio to clear his name. (Tr. 135-136). Later, Ledford clearly admits that he was called back from Ohio because they said he had acted up. (Tr. 167). Ledford constantly appeared to be either avoiding direct answers to questions put to him, indicating a lack of integrity, or to be unable to understand simple direct questions concerning his conduct, indicating a lack of judgment. On the whole, I found his testimony lacked credibility.

On the other hand, I found both Endler and Douglass to be credible witnesses. Neither Douglass nor Endler knew Ledford's personnel history until they were asked to investigate the "C" rating. After meeting twice with Ledford and receiving a report from Ken Strupp, they felt Ledford should be dismissed. Douglass was particularly concerned that Ledford switched shifts in Ohio, absented himself from the work site, and falsely reported his time. (Tr. 335). Douglass stated that his decision to fire Ledford had nothing to do with allegations regarding the reporting of safety problems or whistleblowing. (Tr. 338).

To show that Calvert Cliffs was motivated by his whistle-blowing, Ledford tries to establish that the disciplinary actions taken against him were extraordinary. Ledford argues that he was treated differently from other employees at Calvert Cliffs. He states that he was never informally or formally warned about the problems Strupp raised on the November, 1982 appraisal. The employees policies manual (CX 22) and employee handbook (CX 23) provide a six-step disciplinary process that was not used in Ledford's case. Baltimore Gas and Electric Company maintains that Ledford was informally warned by Strupp. No further discipline was taken following certain infractions because Strupp was a compassionate supervisor. (Tr. 350). For example, Strupp did not insist that Ledford be docked

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pay for having breakfast off company property during working hours. Also, Strupp signed Ledford's time sheet after learning about the switched shifts in Ohio. On both occasions, Ledford was made aware that he was acting against company policy. Ledford admitted that he told Strupp he would never switch shifts again after having been told that it was against company rules. (Tr. 131). For a man in a professional position, being told that something he has done is wrong constitutes informal warning.

I find nothing extraordinary or underhanded in the fact Ledford was not given a formal written disciplinary action report for any of his infractions at the time they occurred. Strupp was apparently willing to let the incidents be reflected in warnings and a "C" rating. Douglass, unaware of the specifics of Ledford's personnel history until Ledford

forced the issue of his "C" rating, was not as lenient a supervisor as Strupp. Endler testified that the six-step disciplinary process was not mandatory and that the employee handbook provides that when appropriate, one or more of the steps can be skipped. (Tr. 263).

Ledford tried to show that his treatment was unusual by comparing himself with other employees who were fired by Calvert Cliffs over the past two years. Endler testified that five people were fired without having received earlier formal written warnings. Each of the five were fired within days of the discovery of their infractions, (Tr. 252-259), while Ledford's infractions occurred months before he was fired. However, the testimony revealed that those responsible for Ledford's discharge were unaware of his infractions months before he was disciplined. When the infractions came to Douglass's attention, Douglass recommended immediate action.

Another instance used by Ledford to show that his discipline was unusually harsh concerns the events taking place during his first trip to Ohio. Employees of the Timet plant reported to Calvert Cliffs that Ledford had come to work having drunk alcoholic beverages. Ledford seems to imply that any discipline for this infraction is merely a ruse. He presents two occasions when the management at Calvert Cliffs sponsored parties at which alcohol was served. At a luncheon for an employee leaving the Quality Assurance Department, quality control inspectors were allowed to have alcohol off company property and were allowed to return to work for the rest of the afternoon. On Christmas Eve in 1981, a party was held in the offices of the quality control inspectors. Alcohol was served. I find Ledford's comparison between the parties sanctioned by the Calvert

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Cliffs management and his showing up to work reportedly having had too much alcohol completely farfetched. Almost every organization sponsors parties to honor employees who are leaving or for special occasions. Not infrequently, alcohol is permitted at these affairs designed to improve employee morale, to give employees an opportunity to mingle with each other, and to enhance the atmosphere of the work place. I am totally unconvinced that by allowing alcohol at two special events, Calvert Cliffs improperly singled Ledford out by objecting to his reported arrival at work having had too much to drink. The situations are not at all analogous.

The luncheon party was used again by Ledford to show that he was treated differently from other employees. He implies impropriety in the fact he was penalized for having breakfast off the Calvert Cliffs plant during working hours, while the company sponsored a luncheon off the premises during working hours. (Tr. 356-368). For the same reasons set forth concerning the issue of alcohol, I am unpersuaded that a company sponsored luncheon is comparable to Ledford's unauthorized breakfast.

Although both improperly switched shifts in Ohio, Ledford points to the disparate treatment accorded he and Shucker as proof that his treatment was motivated by his

protected activities. When the switching of shifts became known to Douglass, a disciplinary action report was placed in Shucker's file. Nevertheless, in May, 1983, he was promoted. Shucker was promoted even though he had been charged by the police for drug violations and Calvert Cliffs was aware of the charges. The testimony revealed, however, that all charges against Shucker were dropped by the police. (Tr. 381-385).<sup>5</sup> Ledford has not produced evidence that Shucker committed violations of company rules other than switching shifts that one time. Given Douglass's and Endler's statements that Ledford's discharge was based on his overall performance, the evidence of the different treatment between Shucker and Ledford does not show Ledford was penalized for being too effective as a quality control inspector.

#### IV

In conclusion, I find that Ledford has not established a *prima facie* case of entitlement. I do not find that the "C" rating, the suspension, or the discharge were motivated by any activity protected under Section 5851 of the Act. Even had Ledford been able to establish that his activities as a quality control inspector were a motivating

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factor in the decision to discipline and discharge him, Baltimore Gas and Electric Company has shown by a preponderance of the evidence that it would have taken the same actions even absent the protected activity. The evidence shows that Douglass and Endler honestly believed that Ledford lacked the integrity and judgment necessary for a quality control inspector. Baltimore Gas and Electric Company had ample grounds to discipline and discharge Ledford. Accordingly, I conclude that Ledford is not entitled to recover under the Act.

#### RECOMMENDED ORDER

It is hereby recommended that John M. Ledford's claim be denied and that judgment be entered in favor of Baltimore Gas and Electric Company.

E. EARL THOMAS  
Deputy Chief Judge

Dated: 29 NOV 1983  
Washington, D.C.

EET:ERE:jeh

#### [ENDNOTES]

<sup>1</sup> The hearing was originally scheduled for July 12, 1983 and the complainant moved for a continuance to allow his recently retained counsel more time to prepare. The



complainant agreed to waive the requirement in 29 C.F.R. 24.6(b)(1) that specifies the Secretary of Labor shall issue a final order within ninety days of a complaint.

<sup>2</sup> The complainant's and the respondent/employer's exhibits will be abbreviated as CX and EX throughout this decision. The transcript shall be referred to as Tr.

<sup>3</sup> Ledford denies that he made the first anonymous telephone call to Murphy. I credit Murphy's testimony on this factual dispute. Notwithstanding his possible bias as an employee of the respondent testifying on behalf of the respondent, I found Murphy's testimony to be credible on the whole. I can find no reason why he would falsely state that Ledford acknowledged calling him earlier, as there is no substantive or procedural advantage to be gained from such a statement.

<sup>4</sup> Baltimore Gas and Electric Company's employee policies manual provides as one step in the disciplinary process that a formal warning be issued called a disciplinary action. (CX 22). The disciplinary action, according to the employee handbook, is a strong warning against repetition [of the infraction] and of the consequences, accompanied by a written report of the offense and action taken. (CX 23).

<sup>5</sup> A Calvert Cliffs senior quality control inspector was also charged with Shucker. The charges against this employee were not dropped and Douglass testified that the inspector was demoted and transferred. He was not fired because it was his first offense. (Tr. 385).